

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	
)	
IN THE MATTER OF: BID PROTEST)	DECISION
)	
SOUTHERN ELEVATOR COMPANY)	
)	CASE NO. 2009-113
v.)	
)	
MATERIALS MANAGEMENT OFFICE)	POSTING DATE:
)	JUNE 24, 2009
IFB NO. 5400000548)	
ELEVATOR MAINTENANCE FOR THE)	
MEDICAL UNIVERISITY OF SOUTH)	
CAROLINA)	
)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest from Southern Elevator Company, Inc.¹ With this Invitation for Bids, the Materials Management Office (MMO) attempts to procure elevator maintenance services for the Medical University of South Carolina (MUSC). Southern protests MMO's intent to award a contract to Thyssenkrupp Elevator Corporation (Thyssen).

NATURE OF THE PROTEST

Southern protests the fact that the total cost listed on the intent to award a contract to Thyssen are not the same as the amounts read at the bid opening. The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

1. On December 12, 2008, MMO issued an Invitation for Bid (the invitation for bid as amended is referred to throughout this document as the solicitation).
2. On February 5, 2009, MMO issued Amendment #1 to the Invitation for Bid.
3. On February 12, 2009, MMO issued Amendment #2 to the Invitation for Bid.
4. On March 3, 2009, MMO opened the following bids:

¹ Pursuant to SC Code Ann § 11-35-840, the Chief Procurement Officer for Goods and Services delegated his authority to conduct an administrative review of this matter and to issue a decision to the Chief Procurement Officer for Construction.

Offerors
Thyssen
Otis Elevator Company
Southern Elevator Company, Inc.

5. On March 25, 2009, MMO posted a statement of intent to award to Thyssen.
6. On April 3, 2009, the CPO received Southern's letter of protest.

MOTION TO DISMISS

On May 13, 2009, Thyssen submitted a motion to dismiss Southern's protest as insufficient to alert the parties of the grounds for protest and failure to state a claim for which relief can be granted. On June 17, 2009, Thyssen submitted an additional motion to dismiss Southern's protest on the grounds that the CPO's June 15, 2009 decision in the protest of Otis Elevator Company regarding this same solicitation. See *Protest of Otis Elevator*, CPO Case No. 2009-112. Southern has not responded to either motion.

"A protest ... must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided." *SC Code Ann § 11-35-4210(2)(b)*. While the specificity of a protest is not to be judged on highly technical or formal standards, the protest must "alert the parties to the general nature of the grounds for protest." *Protest of Sterile Services Corporation*, Case No. 1983-17. While, Southern's protest may not be artful it is sufficient to advise all parties that the issue is over the difference between the prices read aloud at the bid opening and the prices listed in the intent to award. However, this complaint by itself does not provide a beneficial remedy to Southern. Whether, the Thyssen price read aloud at the bid opening or the one in the intent to award is the correct price; Thyssen's price is lower than that of the other two bidders. It is only when joined with the provisions of the solicitation cited in its letter of protest that Southern's protest of the variation between prices makes any sense. In its letter, Southern quotes in its entirety the provisions of the solicitation titled "**RESPONSIVENESS/IMPROPER OFFERS**". Construing Southern's protest liberally, the reason for including this provision of the solicitation in the letter of protest is to alert the parties that Southern is protesting Thyssen's responsiveness with respect to its bid price.

Giving Southern's single ground of protest the broadest possible reading, it is no more than that raised by Otis in its Ground of Protest Number 2. Because the CPO decided this issue with respect to this solicitation in his decision posted on June 15, 2009, and because that decision was based on the solicitation, bid documents, other public documents, and law there is no point in the CPO addressing the matter a second time.

Because Southern's protest does not raise any issues that were not raised in Otis's protest, the two protests should have been consolidated.² For the same reason, should Southern decide to appeal this decision, the CPO recommends that Southern's appeal be consolidated with Otis's appeal currently pending before the Procurement Review Panel.

DECISION

It is the decision of the Chief Procurement Officer that for the reasons set forth in his decision in the Matter of: Protest of Otis Elevator Company, Case No. 2009-112, regarding Otis's Ground of Protest Number 2, Thyssen's bid was responsive.

For the foregoing reasons Southern Elevator Company's Protest is denied.



John St. C. White
Chief Procurement Officer



Date

Columbia, South Carolina

² Southern did have a representative present at the hearing on the Protest of Otis Elevator Company, but did not participate in the hearing.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



To: Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

March 31, 2009

Re: Protest of Award
(Solicitation Number: 5400000548)
Description: L1 Elevator Maintenance

To whom it may concern;

Please accept this as notice of Southern Elevator Company's (SECO's) protest to the award of "L1 Elevator Maintenance", Solicitation Number 5400000548. SECO protests the award based on the following; at the public opening the bids were read aloud stating the following; Southern Elevator bid \$22,985.00 per month, Otis Elevator \$23,515.00 per month, and ThyssenKrupp Elevator \$15,000.00 per month. The award as posted on the South Carolina Procurement Information Center website on March 25, 2009 states the following;

Total Potential Value: \$ 1,222,220.00

Maximum Contract Period: April 06, 2009 through April 05, 2014

Item	Description	Unit Price	Total
00001	Elevator Maintenance	\$ 244,440.00	\$ 244,440.00

The Unit Price of \$244,440 calculates to \$20,370.00 per month significantly higher than that which was written in the line labeled "Total Monthly Cost" on Attachment G of the bid document. On page 4 of Attachment G, the bidder is required to enter the "Total Monthly Cost, Total Yearly Cost, and Total 5 Year cost". The ThyssenKrupp number as read by SC MMO employees calculated out based on the monthly bid price of \$15,000.

When calculating and entering the SECO information on the bid documents it was Southern Elevator Company's intent to bid the price of \$22,985.00 per month, \$275,820 per year, and \$1,379,100 for 5 years. The following represents options and expectations that should be considered by the state regarding this bid.

REJECTION/CANCELLATION (JAN 2004)

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

RESPONSIVENESS/IMPROPER OFFERS (JAN 2004)

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment. [02-2A105-1]

In addition to this protest Southern Elevator request a copy of the ThyssenKrupp bid as submitted through the Freedom of Information Act (FOIA). Southern Elevator respectfully exercises its right and option to protest the above referenced solicitation and looks forward to your response and quick resolution.

Respectfully Submitted,

Jim Williams

Jim Williams
Regional Manager
Southern Elevator Company, Inc.

Cc. Tony Tovsen